Extruded Metals, Inc. *and* Local 4, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO. Case 7–CA–39934(1)

April 27, 1999

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND BRAME

On April 24, 1998, Administrative Law Judge John H. West issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.*

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Extruded Metals, Inc., Belding, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dwight R. Kirksey, Esq., for the General Counsel.
Jack C. Clary, Esq. (Miller, Johnson, Snell & Cummiskey, P.L.C.), of Grand Rapids, Michigan, for the Respondent.
Thomas M. Hardin, of Belding, Michigan, for the Charging Party.

DECISION

STATEMENT OF THE CASE

JOHN H. WEST, Administrative Law Judge. Local 4, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, (Union) filed a charge against Extruded Metals, Inc. (Respondent) in June 17, 1997. A complaint and notice of hearing was issued on August 12, 1997. It alleges that Respondent violated Section 8(a)(1) of the National Labor Relations Act (the Act), by threatening employees with the loss of their jobs if they did not vote "yes" on the Respondent's contract proposals made to the Charging Party. Respondent denies violating the Act.

A hearing was held on February 5, 1998, in Grand Rapids, Michigan. On the entire record[1] in this proceeding, including my observation of the demeanor of the witnesses and consideration of the briefs filed by the General Counsel and by Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation with an office and place of business in Belding, Michigan, is engaged in the manufacture and nonretail sale of brass rods and related products. The complaint alleges, the Respondent admits, and I find that at all times material, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICE

The Facts

Gary Gephart, who has been with Respondent for 13 years, is on Respondent's bargaining committee and is Respondent's administrative human resources manager, testified that Respondent had a 13-week strike which ended in December 1994; that there has been no collective-bargaining agreement since 1994; that the negotiations which were started in the fall of 1996 broke off, they were restarted in February 1997 and they went downhill and started falling apart in March 1997; and that the Company asked the union bargaining committee if the Company gave its last best offer, would the union committee take it to the membership.

On June 3 or 4, 1997, according to the testimony of Respondent's employee Michael King, as he was leaving work he received a copy of Respondent's "FINAL AND BEST PROPOSAL," General Counsel's Exhibit 3.[2] King testified that the union committee had posted the proposal on the bulletin board. A vote on the proposal was scheduled for June 25, 1997. On cross-examination King testified that between June 2 and 5, 1997, the Union posted the notice of the meeting to vote on the proposal.

On June 7, 1997, Respondent's employees King and Roger Scheid, both of whom work as pool employees who fill in for other employees in their absence, reported for work at 7 a.m. As was their usual practice, they went to the band saw area to find out if they would be replacing other employees elsewhere at that time. Robert Edmonds, who is Respondent's general foreman, told them to come with him to the conference room. King testified that in the conference room Edmonds asked him and Scheid to sign "WORK INSTRUCTIONS," Respondent's Exhibit 1, which indicate "I have read the [specified] Work Instructions." for a named machine or a specified job; that this certification was a part of the "ISO 9002" standard of quality program; that Edmonds only had some of the involved instruction books or job descriptions on hand and he and Scheid told Edmonds that they wanted to see all of the involved books before signing; that when Edmonds brought the other books to the conference room he said to Scheid "[w]hat has the Company done to you"; that Scheid replied, "[d]id you look at the contract"; that Edmonds then said he looked over it and "[i]f you don't vote yes for this contract, you won't have a job"; that when Edmonds pushed the "WORK INSTRUCTIONS"

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

* In par. 1(a) of the judge's recommended Order, the word "made" should be substituted for the word "make."

[1] Respondent's unopposed motion to correct transcript errata is granted. It will be placed in the record as R. Exh. 10.

[2] The proposal is dated May 30, 1997, on the front page. Subsequently, King testified that while he worked on June 3, he did not work on June 4, 1997. King is on the executive board of the Union.

and a pencil at him to sign he asked Edmonds "[i]s the Union aware of what we are doing here"; and that Edmonds then said, "I didn't want to have to say this. I was instructed if you didn't sign these papers . . . I'm going to have to send you home and you are to report to Gary Dennis [, who was the plant manager at the time and at the time of the hearing was superintendent,] Monday morning."[3] On cross-examination King testified that Scheid did not say that he did not trust the Company; that Edmonds asked Scheid why he did not trust the Company;[4] that when Scheid asked Edmonds if he looked at the proposal Edmonds replied that he "glimpsed at it"; and that Edmonds did not say that these "WORK INSTRUCTIONS" did not have anything to do with the contract. And on redirect King testified that when Edmonds said, "if you don't vote for the contract, you won't have a job" Edmonds did not explain his statement at that time or later that day to him; and that "right away after it happened" he told Union Steward Daniel Burns and about an hour after it happened he told union committee member Steve Johnson what Edmonds had said.

Scheid testified that Edmonds approached him and King and said that he needed to see them in the conference room; that Edmonds said that Respondent was getting ISO 9002 certification and he wanted them to sign for their job duty certifications; that he told Edmonds that he was not sure that he wanted to sign them and Edmonds said that they were nothing but certifications for ISO 9002; that he told Edmonds that he did not want to sign and he did not trust the Company; that Edmonds asked him why he did not want to sign and he asked Edmonds if he saw the company-proposed contract; that Edmonds said that he had seen it, he was not real familiar with it, but he did not think it was too bad a contract, and "[i]f you guys don't pass this contract, you won't have a job here"; that Edmonds said that signing the certifications had nothing to do with losing a job; that he and King said that they would like to read all of the involved books first and Edmonds got the other books for them to read; that when King finished reading the books he asked Edmonds if the Union was aware or going along with the program , and if it was all right; that Edmonds then slammed his arm on the table and said, "I didn't want to do this, but I was told to tell you that if you do not sign this, I was to send you home and you were supposed to report to Gary Dennis on Monday morning"; that he then signed the forms "under duress";[5] that when Edmonds then asked him what the Company did to him to make him feel that way he told Edmonds about three employees who he believed were not treated fairly by Respondent; that as he left the conference room he was approached by the union steward and King and he told the union steward that they were threatened that if they did not sign the ISO 9002 form, they would be sent home and they would have to report to Dennis on Monday and that if the Company's contract did not pass, they would not have jobs; that Edmonds did not explain what he meant when he stated that they would be out of a job; that no one else from management ever explained or said anything further about what Edmonds said regarding voting for the contract proposal; that the Company's proposal was handed out by the chief union steward to the employees when they were on their way into work; and that he received a copy of the company proposal after May 30, 1997, but before he had the meeting with Edmonds on June 7, 1997. On cross-examination Scheid testified that Edmonds started the meeting stating that no one was going to lose their job by signing the "WORK INSTRUCTIONS"; that he did not trust the wording of the documentation in that he believed that with the wording, if he was injured at work, it would be entirely his fault; that when King finished reading the books he asked Edmonds if the Union was aware and if the Union was in agreement with it and Edmonds slammed his hand on the table and said, "I've been given direct orders if you do not sign this, that I'm to send you home this morning, and you're to report to Gary Dennis Monday morning"; that when he asked Edmonds if he had seen the company proposal Edmonds said, "he didn't read it all that good and if you don't accept this contract, you guys won't have a job here" or "if the contract did not pass, we wouldn't have a job there . . . no jobs there"; that when Edmonds saw that he signed the "WORK INSTRUCTIONS" under duress Edmonds asked him "[w]hat did the Company ever do to you to make you feel that way; that King brought Union Steward Dan Burns back to the conference room and he spoke with King and Burns as he left the conference room; that later that day he spoke with Steve Johnson about what occurred in the conference room and later Johnson told him that he spoke with Edmonds about the matter; and that other than this one time Edmonds had not threatened his job.

Edmonds testified that in 1994 there was a 3-month strike and the parties have not had a collective-bargaining agreement since then; that he had been instructed to have meetings with the employees and have them go over the directions and work sheets for ISO 9002; that he met with King and Scheid first so that they could subsequently relieve others who later came to the conference room;[6] that over the next 3 to 4 days he took all 42 of his employees into the conference room, 2 or 3 at a time; that he explained to Scheid and King what ISO 9002 was about and told them to read the instructions he gave them; that when he subsequently asked King and Scheid if they read and understood, Scheid said that he was not going to sign because they did not have a contract or there was no contract in place at the time; that he explained that the ISO 9002 was not part of the contract but was part of their job assignment; that when Scheid then refused a second time he told Scheid that if he did not sign, he would give him a pass and he could refuse in front of Dennis on Monday;[7] that he had been told by Dennis that if an employee did not want to sign, not to send the employee home early but give him a pass to see Dennis on Monday so if the employee refuses at that time, the employee would be dismissed; that no one but Scheid refused to sign; that he did not recall King having any problems or saying anything; that he was not aware of the vote on the company proposal until A shift returned to work on Wednesday June 11, 1997, and he saw the notice of the ratification meeting, Respondent's Exhibit 7; that he did not try to coerce employees to vote for the contract; that when union committee person Steve Johnson asked him if

[3] Originally King thought that the meeting with Edmonds occurred on June 6, 1997.

[4] King's affidavit, R. Exh. 2, does not indicate that Edmonds asked Scheid why he did not trust the Company. Rather, the affidavit indicates that Scheid said that he did not trust the Company because of the contract.

[5] As indicated on R. Exh. 1, Scheid wrote under pressure or under duress next to his signature.

[6] The involved conference room is not in the management area of the facility but rather it is on the plant floor near Edmonds' cubicle.

[7] Edmonds testified that he only threatened Scheid in this manner.

he was telling employees that they had to vote for the contract or they would lose their job he told Johnson that he would not, could not and did not; and that later that day he drafted an incident report regarding his meeting with Scheid and King, Respondent's Exhibit 8. On cross-examination Edmonds testified that it is possible before June 7, 1997, he knew the Company had asked the Union to present the Company 's last best contract proposal to the employees for a ratification vote, but he did not recall. Subsequently Edmonds testified that he remembered being asked during the June 7, 1997, meeting if the Union was aware and going along with the employees signing the "Work Instructions" forms but he did not recall slamming his hand or arm on the table at that time.

Gephart testified that he first saw the notice of the ratification meeting on June 9, 1997, Respondent's Exhibit 7, and at that time he faxed it to Respondent's counsel; that before that time he was not aware of any ratification vote; that he first became aware on June 9, 1997, that the Company's proposal was being passed out; that Respondent did not tell the foremen of the company proposals in the Company's "*FINAL AND BEST PROPOSAL*"; and that although the Company's bargaining committee did not, prior to the June 25, 1997 ratification vote, give company foremen the May 30, 1997 company proposal, there were so many copies floating around on June 9, 1997, and later that they probably had them.

On June 25, 1997, Respondent's "*FINAL AND BEST PROPOSAL*," General Counsel's Exhibit 3, was voted down by 160 to 15. Scheid testified that he was the sergeant of arms with the Union and he counted the voting ballots.

Over the objection of counsel for General Counsel on relevancy,[8] a number of documents, including but not limited to newspaper articles, letters of the Company, and postings, were received to show that the involved labor dispute was "hotly debated." Respondent's Exhibit 5. Counsel for General Counsel indicated his willingness to stipulate that the parties have had a long and protracted labor dispute, negotiations over a new collective-bargaining agreement are ongoing and the parties have not resolved their differences. It was indicated by Respondent that the documents were not offered for the truth of the matter asserted therein.

Counsel for General Counsel stipulated that Respondent has never been found in violation of the National Labor Relations Act. Respondent's Exhibit 9 is a collection of documents which shows that other charges were filed against Respondent but either the Regional Director determined that further proceedings were not warranted or the matter was settled.

Contentions

On brief counsel for General Counsel contends that a preponderance of evidence supports the allegations of the complaint; that the veracity of the version of King and Scheid is supported by evidence of their actions immediately following the meeting, namely sharing their story with two union officials; that both King and Scheid are still employed by Respondent and they testified against their pecuniary interests; that the violation is not a de minimis violation of the Act where, as here, the threats were communicated to other employees; that since *Gissel Packing Co*., 395 U.S. 575 (1969), employer statements regarding possible adverse effects of union activities have been considered protected only when presented as 'predictions' or 'economic forecasts' based on 'objective fact'; that Edmonds explicitly threatened employees with job loss if they did not approve the contract and his statement was made without reference to the Company's financial health, the competitive necessity of the ISO 9002 program or any other explanation; that Respondent has cited no cases for the position it has taken, namely that the history of the bargaining relationship alone provides adequate context for an employer's naked threat of job loss; that the fact that the contract was rejected by the union voters on June 25, 1997, a little more than 2 weeks after the incident, does not preclude a finding that Edmonds' threat of job loss was coercive for the standard used by the Board to determine whether there is an unfair labor practice is an objective standard and not a subjective standard; and that a threat can violate Section 8(a)(1) of the Act regardless of its ultimate impact on a contract proposal.

Respondent, on brief, argues that Edmonds credibly denied that he threatened King and Scheid that if they did not vote for the company proposal they would lose their jobs; that counsel for the General Counsel failed to prove that Edmonds had any knowledge of a union ratification vote when he allegedly made the involved threat; that counsel for General Counsel's failure to call bargaining committee members to testify when the company proposal was distributed compels a finding that Edmonds did not know of the ratification vote as of June 7, 1997; that there are multiple inconsistencies between the affidavits of King and Scheid and their hearing testimony and between the testimony of these two witnesses; that it is elemental that the standard in determining whether an 8(a)(1) violation has been established is whether the alleged statement, in the totality of circumstances, would reasonably induce fear of reprisal for union or other protected activity; that at best, even if Scheid and King are credited contrary to the weight of the evidence, Edmonds' alleged comment—in whatever form it is credited—was isolated and de minimis and it cannot be divorced from its context; that no evidence was presented of any employee other than King, Scheid, Burns, and Johnson learning of Edmonds' alleged threat; and that no Local 4 official could reasonably be put in fear of reprisal in this case and counsel for the General Counsel's two witnesses admitted that they were not put in fear of reprisal.

Analysis

In my opinion, Respondent violated the Act as alleged.

On the one hand, one would expect that there would be minor inconsequential differences in the testimony and affidavits of two witnesses, King and Scheid, to the same occurrence. Their testimony and affidavits, with respect to the basics of what happened and what was said, are consistent. On the other hand, while Edmonds takes the position that he would not have discussed employees ratifying the company proposal because he did not at the time involved know that a ratification vote was scheduled, he subsequently testified that it is possible that before June 7, 1997, he knew the Company had asked the Union to present the Company's last best contract proposal to the employees for a ratification vote but he did not recall. Also, Edmonds did not unequivocally deny that he slammed his hand or arm on the table during this meeting. All Edmonds offers is that he could not recall doing this at that time. Edmonds took a strong stand at the involved meeting. He went so far as to slam the table to physically demonstrate the gravity of the situation and at the same time attempt to intimidate the two employees. It had been anticipated by Respondent that there might be a problem with the signing of the certifications and in advance of

[8] Counsel stipulated to the authenticity of the documents.

the meeting Dennis told Edmonds that if an employee did not want to sign, the employee should be sent to see Dennis and if the employee refused to sign at that time, the employee would be dismissed. ISO 9002 was very important to Respondent. And the certifications were a requirement of ISO 9002. As anticipated there was a problem. And when he was faced with what he perceived to be an employee refusing to sign the certifications, Edmonds lashed out and threatened the employees both with respect to the Company's proposal and the certifications. Respondent was not about to let the employees use the Respondent's need for the certifications as leverage. The testimony of King and Scheid is credited.

As noted above, Respondent argues that even if King and Scheid are credited, the comment was isolated and de minimis and the complaint must be dismissed. The case cited by Respondent in support of this argument, *Metz Metallurgical Corp*., 270 NLRB 889 (1984), deals with the question of whether the conduct involved there affected the results of the election therein. One of the considerations was the extent of the dissemination of the threat in that proceeding. The instant proceeding does not involve an election. And whether the threat was disseminated is not an issue here. The issue here is did Respondent, through Edmonds, engage in the conduct alleged. If it did, then it acted unlawfully in violation of the National Labor Relations Act. *Ray-Loc*, 265 NLRB 1663, 1665 (1982).

Also, as noted above, Respondent next argues that even if King and Scheid are credited, the threat was not unlawful considering the context, namely the negotiations and labor dispute. With respect to the cases relied on by Respondent, counsel for General Counsel correctly points out that in *United Technologies Corp*., 313 NLRB 1303 (1994), *Crafts Precision Industries*, 305 NLRB 894 (1991), *Hampton Inn*, 309 NLRB 942 (1992), and *Upper Great Lakes Pilots*, 311 NLRB 131, 135 (1993) there were no explicit threats of job loss regarding statements considered in the involved contexts as there is here. Edmonds did not attempt to present to the involved employees any explanation showing what objective facts he was relying on so there is no question as to whether he was making a reasonable prediction and it was protected speech. And since Edmonds did not offer an explanation to the employees, it is not even clear what context he may have had in mind.

The standard for determining whether Respondent committed an unfair labor practice with Edmonds' statement is an objective one and not a subjective one. Consequently, what position the involved employees took at the subsequent ratification vote is not determinative. Respondent violated the Act as alleged in the complaint.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The Respondent violated Section 8(a)(1) of the Act by threatening employees with the loss of their jobs if they did not vote "yes" on the Respondent's contract proposals made to the Charging Party.
4. The aforesaid unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that Respondent has engaged in a certain unfair labor practice, I shall recommend that it be ordered to cease and desist therefrom and that it take certain affirmative action set forth below to effectuate the policies of the Act.

On these findings of fact, conclusions of law, and on the entire record, I issue the following recommended[9]

ORDER

The Respondent, Extruded Metals, Inc., Belding, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with the loss of their jobs if they did not vote "yes" on the Respondent's contract proposals make to the Charging Party.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days of service by the Region, post at its Belding, Michigan facility copies of the attached notice marked "Appendix."[10] Copies of the notice, on forms provided by the Regional Director for Region 7, after having been signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of this proceeding, the Respondent has gone out of business or closed the facility involved in this proceeding, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 7, 1997.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten you with the loss of jobs if you do not vote "yes" on our contract proposals made to Local 4,

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[10] If this Order is enforced by a judgment of the United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of he Act.

EXTRUDED METALS, INC.